

volatiles from the wort (with their respective and well separated boiling points – a difference of 30 degrees Centigrade with the boiling point of DMS being 37.5 degrees Centigrade – see The Condensed Chemical Dictionary, Ninth Edition, p. 310 – a copy of which is attached hereto).

It is well established that when an inventor proceeds contrary to the teachings of a reference, as is true with respect to both of the references in this case, and particularly when in so doing the inventor proceeds to long established prejudices in the prior art, then the resulting invention carries with it all of the necessary, prima facie hallmarks of patentable merit.

It is not for the Examiner to point to a general engineering text and take the Appellant, along with the constitutionally certified public interest in promoting meritorious inventions, on a forced march through a hypothetical *ex post fact* design exercise – an Examiner's denial of an invention's patentable merits on these grounds is expressly repudiated by applicable law.

Finally, it is noted that nowhere in the rejection or the remarks set out in the Examiner Answer does the Examiner point to specific portions of either Kruger or Perry where the claimed subject matter can be found. For example, Appellant can not find any of the claimed process parameters in Perry. This raises the interesting question of how one of ordinary skill in the art would know to use the claimed process parameters given the absence of any specifics in Perry. The failure to point to specific portions of Perry where the claimed subject matter can be found only serves to highlight the deficiencies of the rejection of record.

As for the Examiner's reliance on *In re Chevenard* in connection with his arguments on the non-patentability of claim 48, such reliance is misplaced. First, the *Chevenard* case does not stand for the proposition asserted by the Examiner in his Answer. The only thing that the CCPA said in this case was that the Court did not consider Applicant's contention that the examiner's statement as to equivalency does not coincide with the facts, since there is nothing in the record to contradict the holding and that applicant did not demand that the examiner produce authority for the statement. *Chevenard*, 60 USPQ at 241. *Chevenard* does not stand for the proposition that Appellant must seasonably traverse any "well known" statement during examination. Even if it did, Appellant has always contended that claim 48 was allowable on its own accord as well as for the same reasons as its parent claim(s), and has never acknowledged that the claimed control means were "well known" in the art. It should be recognized that this is nothing more than a

smoke screen raised by the Examiner solely because the cited and applied references fail to teach or suggest the subject matter of claim 48.

With regard to claims 40 and 58, the Examiner is correct that it is a claim preference; however, that is not a basis for rejecting the claim. When one reads the claim in its entirety, one does not find the subject matter in the Perry's Handbook. For example, where is the claimed baffle? One of ordinary skill in the art having FIG. 18-53 before him/her is not in possession of any of the matter being claimed in claims 40 and 58.

With regard to claims 32 and 59, there is nothing in FIG. 18-47 of Perry that teaches using "chimneys having a height so that wort on top of said distribution plate can not flow through said chimneys." The figure does not even mention this point.

With regard to claim 33, FIG. 18-34 does not teach or suggest forming filler bodies from a plurality of rings disposed randomly on a bottom plate.

With regard to claims 37 and 38, it is submitted that FIG. 18-31, which is a graph, could not possibly teach or suggest the subject matter being claimed. Assuming arguendo, that the Examiner is correct in that figure discloses a spray nozzle, he still has not pointed out how this meets the claim limitations.

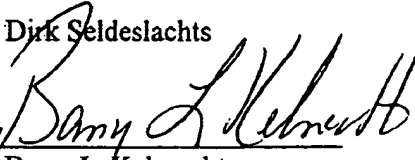
With regard to the comments about claim 39, Appellant would point out that the Perry handbook does not teach or suggest the claimed subject matter. The Examiner merely saying it does is not sufficient. The Examiner should point out specifically where the claimed subject matter can be found. This he has failed to do.

With regard to the Examiner's comments about claim 55, they should be recognized for what they are – another smoke screen. Perry does not teach or suggest rings having the claimed diameter. Absent some teaching, how would one of ordinary skill in the art know what size to make the rings. Even if the size of the rings has to do with the optimization of the system, it still is an invention not to be found in the cited and applied references.

For the reasons set forth herein, as well as for the reasons set forth in Appellant's Brief, the rejection of record should be reversed and the instant application allowed.

Respectfully submitted,

Dirk Seldeslachts


By 

Barry L. Kelmachter  
BACHMAN & LaPOINTE, P.C.  
Reg. No. 29,999  
Attorney for Appellant

Telephone: (203)777-6628 ext. 112  
Telefax: (203)865-0297  
Email: kelmachterb@bachlap.com

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on December 22, 2003.

  
Nicole Motzer